IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.7.2019
PRONOUNCED ON: 10.7.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Writ Appeal No.2151 of 2018

The Qauide Milleth Educational and Social Trust
rep. by its General Secretary
M.G.Dawood Mia Khan
No.1, Mani Mudaliayar Garden
Poes Road, 3rd Street, Teynampet
Chennai 18,
Now at 82, Sterling Road
Nungambakkam, Chennai 18. .. Appellant

Vs.

1. The Principal Secretary to Government
Environment and Forest Department
Fort St. George
Chennai 9.

2. The Principal Secretary and Commissioner
of Land Administration
Chennai 9.

3. The Principal Chief Conservator of Forest
Office of the Principal Chief Conservator of Forest
Saidapet, Chennai 15.

4. The Conservator of Forest
Office of the Conservator of Forest
Chennai 15.

5. The District Forest Officer
Chengalpet Division
Kancheepuram District.

6. The Collector of Kancheepuram District
Office of the Collector
Kancheepuram District
Kancheepuram Town & District.

7. The Tahsildar
Sholinganallur Taluk
Kancheepuram District. .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 03.8.2018 made in W.P.No.29226 of 2012.

W.P.29226/2012:

Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus,to call for the records of the 1st respondent bearing G.O.(Ms) No.226 Environment and Forests (FR 10) Department dated 25.9.2012 and the consequential communication issued by the 5th respondent bearing reference C No.72 39/03/D dated 17.10.2012 received on 18.10.2012 quash the same and thereon forbearing the respondents from any manner proceeding with the resumption of the 29.33 acres of lands out of the 40 acres of land in Survey No.273/A of Nanmangalam Reserved Forest Saidapet Taluk (Presently Shollinganallur Taluk) Chengleput District (presently Kancheepuram District.)

For Appellant : Mr.N.G.R.Prasad
For N.A. Nissar Ahmed

For Respondents 1 to 4: Mr.Vijay Narayan
Advocate General
Assisted by
Mr.S.V.Vijay Prasanth,
Addl.G.P.

For Respondents 5 & 6:Mr.N.Srinivasan, Addl.G.P.

J U D G M E N T

Dr.Vineet Kothari,J

This writ appeal has been filed by the Quaide Milleth Educational and Social Trust, hereinafter referred to as the Trust, aggrieved by the dismissal of their W.P.No.29226 of 2012 by the learned Single Judge of this Court on 03.8.2018.

2. The appellant Trust had laid a challenge to the order dated 25.9.2012 passed by the Principal Secretary to the Government, Environment and Forest Department, Chennai, in G.O. (Ms)No.226, resuming 29.33 acres of Reserved Forest area from the appellant Trust, which was found to be undeveloped and unutilised by the appellant Trust and the remaining 10.67 acres

was left with the appellant Trust to carry on the educational institution activities on the said land.

3. Initially, the appellant Trust was allotted and assigned 40 acres of land in Survey No.273A of Nanmangalam Reserve Forest, Saidapet Taluk, presently Sholinganallur Taluk, Chengalpet District, presently Kancheepuram District. The said 40 acres of land was allotted to the appellant Trust vide G.O.Ms.No.18 dated 10.01.1975 on condition that the Trust has to utilise the said land only for educational purpose and on payment of Rs.100/- per acre. The land in question was to revert back to the Forest Department, in case it could not be utilised for the specified purpose for which it was granted. The agreement dated 06.01.1976 between the appellant Trust and the Forest Department inter alia also provided that the building for the educational purpose shall be constructed within a period of two years from the date of the said grant.

4. The appellant Trust sought de-reservation of the Reserved Forest in question to the aforesaid extent of 40 acres. But, in the meanwhile, the Forest (Conservation) Act, 1980 was enacted by the Parliament and Section 2 thereof prohibited any de-reservation of forest without the specific approval of the Central Government. For conservation of Forest, the Supreme Court was constantly monitoring the same in public interest litigation in the famous case of T.N. Godavarman Thirumulkpad etc. vs. Union of India & Ors. [AIR 1997 SC 1228], in which series of interim orders have been passed by the Supreme Court from time to time.

5. The appellant Trust approached the Supreme Court by way of application in I.A.Nos.142-143 in W.P.(C)No.337 of 1995 seeking the de-reservation of the aforesaid Nanmangalam Reserve Forest. But, the Hon'ble Supreme Court, vide its order dated 16.9.2011, noticing the contention of the Tamil Nadu Forest Department that the appellant had utilised only 10.67 acres of the lands out of 40 acres and the balance are of 29.33 acres mostly consisted of plantation and wild jungle growth only, held that the Court would not express any opinion on the various questions raised before it, but directed the State Government to consider the case of the appellant Trust, after holding enquiry and taking note of the opinion expressed by the Forest Department. The Supreme Court further directed that if the State Government finds that the matter required approval under the Forest (Conservation) Act, then it may be referred to the Central Government and the Central Government may pass appropriate orders in accordance with law.

6. In pursuance of the said directions of the Supreme Court, the respondent State and the Forest Department held an enquiry and after conducting a joint survey of the land in question, the Forest Department passed the impugned order, namely G.O.Ms.No.226 on 25.9.2012 resuming the undeveloped area of 29.33 acres of Reserve Forest land, out of 40 acres placed at the disposal of the appellant Trust and the Principal Chief Conservator of Forests was directed to take follow up action. This G.O.Ms.No.226 dated 25.9.2012 came to be challenged by the appellant Trust by way of writ petition in W.P.No.29226 of 2012, which has been dismissed by the learned Single Judge of this Court on 03.8.2018 giving rise to the present writ appeal.

7. Under the interim orders of the Division Bench of this Court also, again a joint survey was held on 24.9.2018 and Survey Report, along with the Maps, prepared by the respondent State and objections there to filed by the appellant Trust have also been placed on record before us.

8. Mr.N.G.R.Prasad, learned counsel appearing for the appellant Trust vehemently submitted that the respondent State has not complied with the directions of the Supreme Court in the order dated 16.9.2011, wherein the Supreme Court had only directed the State Government to consider the case of the appellant Trust under the Forest (Conservation) Act, 1980 and to refer the matter to the Central Government for approval under the provisions of the said Act. But, instead of doing that, the respondent State resumed the major part of the land in question, measuring 29.33 acres, even though the whole of 40 acres was being utilised for educational purposes by the appellant Trust and for this reason alone, the impugned order passed by the respondent State on 25.9.2012 deserves to be quashed.

9. The learned counsel further submitted that the appellant Trust was always pursuing its case for de-reservation of forest to the extent of 40 acres of land given to the appellant Trust in the year 1975 and the respondent State had the power under the old Forest Act to de-reserve the same, but it never did so and that the new Forest (Conservation) Act, 1980 merely imposed a restriction on the State Government to seek approval from the Central Government for such de-reservation. Therefore, the respondent State ought to have sought such approval from the Central Government and then de-reserved the Forest area in question.

10. The learned counsel also submitted that educational purposes carried out by the appellant Trust can never be construed as de-forestation against the intent and object of the Forest (Conservation) Act, 1980 and therefore, there was no reason to resume 29.33 acres of land from the appellant Trust. But, the learned Single Judge has upheld that action of the respondent State and therefore, the present writ appeal filed by the appellant Trust deserves to be allowed.

11. On the other hand, Mr.Vijay Narayan, learned Advocate General sought to stoutly defend not only the order of the learned Single Judge dismissing the writ petition filed by the appellant Trust, but also the impugned order dated 25.9.2012 passed by the respondent State. He submitted that with the enactment of the Forest (Conservation) Act, 1980, there was a total ban and prohibition of de-forestation or any kind of commercial activity in any part of the Reserve Forest and therefore, the State Government, after holding enquiry and ascertaining that 29.33 acres of land was not at all utilised by the appellant Trust for any educational purposes, was duty bound to resume the said part of the Reserve Forest in question where already tree plantation and wild jungle trees were there and some part where it was not so, the Forest Department has planted the trees and has kept it as Reserve Forest and is bound to keep the same as such, without allowing any construction or commercial activity there on.

12. The learned Advocate General further submitted that in the Joint Survey of the land conducted by the State authorities in the presence of the representatives of the appellant Trust, a clear finding was arrived at about the unutilised and undeveloped part of 29.33 acres of land out of the 40 acres initially given to the appellant Trust in 1975 and therefore, in 2012, the land was rightly resumed by the State Government.

13. The learned Advocate General also submitted that in fact the construction raised by the appellant Trust is only in a small portion of 10.67 acres of land, namely 1.2 acres of land only, while the remaining land is being used only as the play ground for children studying in the said educational institution and the State, in fact, could have resumed the entire 40 acres of land, as admittedly, the land was in the Reserve Forest area of Nanmangalam village in Survey No.273A, but, in view of the fact that the actually used area was to the extent of 10.67 acres of land, taking a lenient view of the matter, the State had left that area for the continuous use of the same by the appellant Trust. But, the State was under obligation and bound

by the directions of the Supreme Court and Act of 1980 and it was justified in taking back the portion of the Reserve Forest area to the extent of 29.33 acres and therefore, the appellant Trust has no legal right to assail the same.

14. The learned Advocate General further submitted that the State was not bound to refer the case for dereservation of Forest to the Central Government in terms of Section 2 of the Forest (Conservation) Act, 1980 and could take a decision to resume the part of the land which was found to be not developed and utilised by the appellant Trust. In fact, majority of the construction raised by the appellant Trust on 1.62 acres of land was also not authorised construction and only one of the main buildings was a duly authorised construction and remaining were found to be unauthorised constructions. He said that one recent construction partly raised by Trust is even outside the said 10.67 acres and is an encroachment made by the Trust recently and the same will be removed by the State Government.

15. The learned Advocate General relied upon the decisions of the Supreme Court in the case of Nature Lovers Movement v. State of Kerala [(2009) 5 SCC 373] and K.Balakrishnan Nambiar v. State of Karnataka [(2011) 5 SCC 353], in support of his contentions. He, therefore, submitted that the present appeal filed by the appellant Trust is devoid of any merit and is liable to be dismissed.

16. We have heard the learned counsel at length and perused the relevant documents on record and case law cited at the bar.

17. In our considered opiinion, the appellant Trust is not entitled to assail the resumption of 29.33 acres of Nanmangalam Reserve Forest in Survey No.273A, Kancheepuram District. The forest conservation is a zealously guarded environment safety measure taken by the Parliament, the State Governments as well as the Constitutional Courts of the country. The stupendous effort of the Apex Court in a Public Interest Litigation jurisdiction in T.N.Godavarman case is almost a research topic for Research Scholars and in series of orders passed by the Supreme Court in that case and other allied matters, in the light of developments of Forest Law by the Parliament, the Forest (Conservation) Act, 1980 was enacted and it would be clear that any misuse, abuse or commercial exploitation of forest lands is scrupulously denied, deprecated and prohibited by the legislatures as well as the Courts in the country.

18. The following observations of the Supreme Court are apt to be quoted:

> "18. We shall now consider whether Section 2 of the 1980 Act is prospective in operation and the State Government etc. are not required to obtain prior approval of the Central Government before regularizing use of any forest land for any non-forest purpose or issue patta or grant lease to unauthorised occupants/encroachers of forest land, or the provision contained in Section 2 is applicable qua any action which the State Government or other authority may take with reference to activity undertaken in any reserved forest or any forest land prior to 25.10.1980.
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> Undisputedly, the object of the 1980 Act is conservation of forest and to prevent depletion thereof. Therefore, the Court is bound to interpret the provisions of that Act which would further the object of the legislation. After enforcement of the 1980 Act, the State Governments were denuded of suo moto power to deal with reserved forest or forest land and permit use thereof for non-forest purposes. They could do so only after obtaining prior approval of the Central Government. However, as large tracts of reserved forests and forest land had been occupied by landless poor, who also undertook cultivation for their sustenance many decades before the enactment of the 1980 Act, and there was demand from several quarters that old occupation of the forest land may be regularised, the Government of India, after taking note of the recommendations made in the Forest Ministers Conference and committee appointed by it, issued guidelines for grant of approval to the decision taken by the State Governments before the enforcement of the 1980 Act, i.e., 25.10.1980 to regularize encroachments made on forest land and/or use thereof for non-forest purpose. This necessarily implies that where the State Government had not taken any policy decision to regularize pre-25.10.1980 occupation/encroachment of forest land no order for regularization of such occupation/encroachment can be passed without obtaining prior approval of the Central Government in terms of Section 2 of the 1980 Act which, as mentioned above, contains a non obstante clause. "
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> .....

23. In T.N. Godavarman Thirumulkpad v. Union of India and others[(1997) 2 SCC 267], this Court adverted to the misconception entertained in certain quarters about the true scope of the 1980 Act and the meaning of the word "forest" used therein and held:

> "The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat, Rural Litigation and Entitlement Kendra v. State of U.P. and recently in the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority). The earlier decision of this Court in State of Bihar v.Banshi Ram Modi has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also

> because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

19. On the basis of the aforesaid, the Supreme Court in the case of Nature Lovers Movement (supra) held that after the enforcement of 1980 Act, neither the State Government or any other authority can pass an order or give a direction for de-reservation of reserve forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or grant any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organization which is not owned, managed or controlled by the Government, except after obtaining the prior approval of the Central Government.

20. Similarly, the Supreme Court, in the case of Ambica Quarry Works v. State of Gujarat [AIR 1986 SC 1620], distinguishing its earlier view in the case of State of Bihar v. Banshi Ram Modi [AIR 1985 SC 814], refused to grant renewal of the mining lease in the Reserve Forest area.

21. In a later decision in K.Balakrishnan Nambiar (supra), another Bench of Supreme Court, following the judgment in the case of Nature Lovers Movement (supra), held that all the State Government have to ensure that all ongoing non forest activity within any forest, without the prior approval of the Central Government, must cease forthwith and the State Government must ensure total cessation of non-forestal activities in the forest area.

22. From the said spectrum of legal position about the forest conservation, we are of the considered opinion that the appellant Trust cannot claim as a matter of right the de-reservation of the Reserve Forest area of Survey No.273A in Nanmangalam Reserve Forest. The finding of fact that it had utilised only 10.67 acres of land and 29.33 acres of land was already with the plantation and wild jungle trees and was not

developed or utilised for running the educational institution in question is a finding of fact which is binding on the appellant Trust as well as this Court.

23. The fact that the land in question was a part of Reserve Forest has never been in dispute, as even in the original allotment order of 1975, it was clearly shown to be Reserve Forest area. Therefore, under the expectation of de-reservation by the State Government, which had such power under the earlier Act, the land in question was allotted to the appellant Trust for running the educational institution. But, with the intervention of Parliamentary legislation and subsequent series of prohibitory orders passed by the Supreme Court, there is no possibility of turning Nelson's eye towards the reality and still insist upon the dereservation of Forest in favour of the appellant Trust.

24. In fact, this Court finds that the benign leniency shown by the State Government in not resuming the remaining part of 10.67 acres of land of the same Reserved Forest cannot be allowed to be misused or abused by allowing the claim of the appellant Trust to exceed any further and claim the whole of 40 acres of land. The fact that the appellant Trust has raised unauthorised construction also, does not augur well for the appellant Trust. Therefore, any construction raised beyond the said area of 10.67 acres is absolutely illegal encroachment on the part of the appellant Trust and would therefore deserve to be removed forthwith.

25. The regularisation of the unauthorised construction raised within 10.67 acres is a matter to be taken up by the concerned authorities at their level. But, nonetheless, this Court does not find any good cause made out by the appellant Trust to claim the whole of 40 acres of land or anything beyond 10.67 acres of land which is not resumed by the State Government. In our opinion, no valid exception could be taken by the appellant Trust in the resumption of 29.33 acres of land by the State Government for which they were fully empowered and entitled in law. The resumption of Reserve Forest, instead of seeking approval of the Central Government under Section 2 of 1980 Act, for which the Supreme Court had left free for the State Government to consider, in our opinion, does not amount to any violation or breach of the directions of the Hon'ble Supreme Court by the State.

26. We, therefore, do not find any merit in the present appeal of the appellant Trust and the same is liable to be dismissed and the same is accordingly dismissed, with the following further directions:

(i) In order to maintain and continue with the possession of 10.67 acres of land permitted by the State Government as of now, the appellant Trust shall plant at least 500 new trees (ideal number vide Google) within the said area of 10.67 Acres of land and which may be fruit bearing or giving shadow and which are suitable as per local conditions, within a period of six months from today and a duly verified report of the same by the competent authority of the Forest department and counter signed by the concerned District Collector has to be produced before this Court in compliance. The Trust shall be further responsible for maintaining the said new trees in future as well. If the said conditions is not complied with, the State shall be free to resume the balance land of 10.67 acres also from the said Trust;

(ii) The appellant Trust shall construct, with the due permission and approval of the concerned authorities of the Forest Department, CMDA as well as concerned Municipal Corporation, a pucca stone boundary wall around the said 10.67 acres of land left with them with a sufficient height of 8 feet of the said boundary wall at all places, for which also, a verification report after measuring the land again within the boundary wall to be 10.67 Acres only, shall be furnished in the aforesaid manner to the Court within a period of six months from today. This is considered expedient and necessary to ensure that no further encroachment of any part of forest land is made by the appellant Trust in future. The aforesaid plantation work will be carried out within the aforesaid boundary wall within 10.67 acres of the land;

(iii) The State shall remove the encroachment / construction outside the said area of 10.67 Acres of land forthwith; and

(iv) For verification of the compliance of the aforesaid directions, the Reports with site photographs and Verification Reports by the Trust and Forest Department, duly countersigned by the concerned District Collector, may be produced before this Court for perusal upon completion of six months from today.

There shall be no order as to costs. Consequently, CMP No.16626 of 2018 is also dismissed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

kpl
To
1. The Principal Secretary to Government
Environment and Forest Department
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WA No.2151 of 2018.

JP(CO)
SP(01/08/2019)